

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No: 05-CV-0329-GKF-SAJ
)	
TYSON FOODS, INC., et al.)	
)	
Defendants.)	

AFFIDAVIT OF TODD E. BURGESSER

I, Todd E. Burgesser, of lawful age, being first duly sworn upon oath, state:

1. I have been employed by Camp, Dresser and McKee ("CDM") since 1991. CDM has been retained by the State of Oklahoma ("the State") to provide expert environmental consulting services in the above-captioned litigation ("Oklahoma Poultry Litigation").

2. I am manager of the CDM laboratory in Denver, Colorado. As part of my duties, I have been tasked with assisting in the processing of environmental data generated by CDM in connection with the Oklahoma Poultry Litigation. For instance, I am tasked with assuring that data is promptly provided to the State once it completes the Quality Assurance / Quality Control ("QA/QC") process. Once the State receives the data from CDM, the State produces that data to Defendants.

3. CDM has never intentionally withheld any data generated in connection with the Oklahoma Poultry Litigation. CDM has made a good faith effort to make all the data available as quickly as practicable.



4. I have reviewed Defendants' Reply in Support of Motion to Compel Plaintiffs' Compliance with the Court's Data (Dkt. #1672) ("Defendants' Reply"), and Exhibit A to Defendants' Reply, the Affidavit of Kristen Shults Carney ("Affidavit"). More particularly, I have investigated the specific allegations as to the production of CDM data on March 25, 2008, as raised in Defendants' Reply and the Affidavit. Following are my findings.

February 2008 Data

5. Defendants list data from February 2008 which was produced on March 25, 2008. Affidavit, Ex. A, at 3 and 5 (STOK35489-35504; STOK0049301-49329). Defendants' complaint about the production of this data is unclear. The February 2008 data was produced within a realistic timeframe.

Electronic Data

6. Defendants mistakenly believe the State did not produce a large quantity of data, generated in 2006 and 2007, until March 25, 2008. *See* Defendants' Reply at 5-6; Affidavit, Ex. A, at 5-7. However, most of this 2007 data produced on March 25 was merely the electronic format of data which had previously been produced. CDM recently received this 2007 data in electronic format from the A&L laboratory which was produced to Defendants on March 25, 2008. But Defendants received most of this 2006 and 2007 data in hard copy report format long ago.

7. For instance, Defendants allege that the State "withheld," for two years, 15 samples taken and analyzed in March 2006 and another 50 samples taken and analyzed in August 2006. Defendants' Reply at 6. On the contrary, all of this 2006 data was originally produced to Defendants in hard copy format on February 1, 2007 and April 1, 2007.

Defendants will find this data on CDs 1, 2 and 8. Also contrary to Defendants' assertions, this data was validated through the QA/QC process.

8. Additionally, Defendants complain that the State failed to produce 500 samples, taken in April and May 2007, until March 25, 2008. Defendants' Reply at 6. All of this April and May 2007 data was previously produced in hard copy report format during the summer and fall of 2007. Defendants will find this data on CDs 11, 14 and 20. All of this data was validated through the QA/QC process.

9. Defendants assert the State failed to produce an additional 200 samples, taken in June, July and August, 2007, until March 25, 2008. Defendants' Reply at 6; Affidavit, Ex. A, at 5-6. All of the June and July 2007 data was previously produced in hard copy format as part of the State's November 19 and December 28, 2007 productions. Defendants will find this data on CDs 20 and 21. The June and July 2007 data was validated through the QA/QC process.

10. Data from the August 2007 sampling was not produced until March 25, 2008. However, QA/QC validation of this August 2007 sampling was not completed until February 18, 2008 (*see* STOK0035514-35517; 35527-35530; 35546-35554; and 35555-35600). Therefore, this August 2007 data was produced in a realistic timeframe.

January 2008 Data

11. Defendants list data that was taken and/or analyzed in January 2008 and produced on March 25, 2008. Affidavit, Ex. A, at 2-3 (STOK35472-35491). Defendants' complaint about the production of this data is unclear.

12. Any delay in the production of the January 2008 data was due to a change in the way the lab submitted reports. Before January 2008, the A&L lab had submitted the

reports via the mail. However, unbeknownst to me, the January 2008 data was simply uploaded to the CDM website. I was not notified of this change in protocol. Once I discovered that the data was on the website, I began efforts to make the reports available to the State.

December 2007 Data

13. Defendants additionally complain that data from December 2007 was not produced until March 25, 2008. This data was simply overlooked during the holiday season. This data was produced as soon as I realized the production was still pending. Some chemical data from December 2007 was delayed due to a delay from the A&L lab in providing QA/QC information for chloride and nitrate.

Diatom Count, Macroalgae and Macroinvertebrate Samples

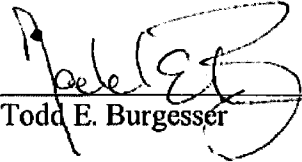
14. Defendants also complain that the March 25, 2008 production included diatom count samples taken from September 2006 through May 2007, 500 macroalgae samples taken March – May 2007, and 80 benthic macroinvertebrate samples taken in April and June 2007. Defendants' Reply at 6.

15. Approximately one-half of the macroalgae and macroinvertebrate data was previously provided. The remaining data simply fell through the "cracks." We thought it had been previously submitted, but after receiving a hard drive of Bates-numbered pages, we noticed that the diatom of some of the macroalgae and macroinvertebrate data was not included. There was never any intention of not producing this data earlier; it was simply a case of data being temporarily "lost" in the midst of the approximately 100,000 pages that were produced.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury, under the laws of the United States of America,
that the foregoing is true and correct.

Executed on the 28 day of April, 2008.



Todd E. Burgess